IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE

Criminal Rev.Application No. 300 of 2005

Manuchechr @ Minoo Khodyare Kayani ..Petitioner

vs.

1. State of Maharashtra & Anr. ..Respondents

Shri N.B.Shah with Shri Piyush Shah for petitioner.
Smt.M.H.Mhatre, A.P.P. for respondent no.1 State
Shri Girish B.Kedia for respondent no.2.

CORAM: A.M.KHANWILKAR J.
29th NOVEMBER, 2005

P.C.

1. Counsel for the parties submit that settlement is not possible and the matter be proceeded on merits. Accordingly arguments are heard on merits.

2. Heard counsel for the parties. Perused the material on record. I see no infirmity either in the findings recorded by the courts below or the approach adopted in recording the finding of fact and the consequential order of conviction and sentence against the petitioner. To get over this position counsel for the petitioner relying on para 5 of the complaint where the complainant has stated that ultimately after waiting for

quite some time the complainant herself entered the details regarding the amount, name and date on the blank cheques which were entrusted to her and presented the same for realisation. Learned counsel for the petitioner argues that this was unilateral act of the complainant and if it is so the document in question cannot qualify the purport of the cheque to entail into an offence under sec.138 of the Negotiable Instruments Act. The argument seems to be attractive at the first blush. However, the same is without any substance. This argument clearly overlooks the legal position, particularly the provisions contained in section 20 of the Negotiable Instruments act. In the present case the complainant has filled in the details which, according to her, was the amount receivable from the petitioner/accused. It is not the case of the petitioner that the amount entered in the blank cheques exceeded the amount covered or liability of the petitioner. The courts below have further found on appreciation of evidence on record that the petitioner/accused has failed to establish the position that the cheques were entrusted to the father of the complainant and not in October, 2001 as claimed by the

complainant. There is no reason to defer from the finding of fact so reached. The courts below appreciated the evidence on record, which, to my mind, is unexceptionable. Once that finding is to be accepted as it is it would necessarily follow that the presumption under sec.139 of the Act will be attracted. The petitioner, as rightly found by the two courts below, has failed to bring on record the evidence that the portion or entire outstanding amount has been paid by the petitioner to the complainant at any point of time. If it is so the conclusion reached by the courts below recording the finding against the petitioner cannot be found fault with. Viewed in this perspective there is no substance in this petition. The same is dismissed.

3. At this stage, counsel for the petitioner prays that operation of this order be stayed to enable the petitioner to take up the matter in appeal. As the petitioner is 72 years of age and intends to take up the matter in appeal before the superior court, request for stay, to my mind, is reasonable. Petitioner not to be arrested for four weeks from today.